

FILED

MAY 01 2008

PATRICK E. DUFFY, CLERK
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

CURTIS JAMES SULLIVAN,)	CV 08-22-H-DWM-RKS
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
RANDI HOOD,)	
)	
Defendant.)	
)	

Plaintiff Sullivan has filed a Complaint under 42 U.S.C. § 1983 alleging that Defendant Hood, his court-appointed attorney for a state criminal charge, violated his constitutional right to counsel through Hood's poor performance.

United States Magistrate Judge Keith Strong conducted preliminary screening of the Complaint as required by 28 U.S.C. § 1915(e)(2). Under that statute, the court engages in a preliminary screening to assess the merits of the claims and identify cognizable claims, or dismiss the complaint or any

portion thereof if the complaint is frivolous, malicious, or fails to state a claim upon which relief can be granted.

Judge Strong issued Findings and Recommendations in which he recommends dismissal of the Complaint for failure to state a claim upon which relief may be granted. Judge Strong explained that Sullivan's claim fails because 1) public defenders are not state actors within the meaning of § 1983, and 2) Sullivan cannot prove that his conviction or sentence has been reversed on direct appeal or otherwise declared invalid.

Sullivan did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). I can find no clear error with Judge Strong's Findings and Recommendations (Doc. No. 4) and therefore adopt them in full.

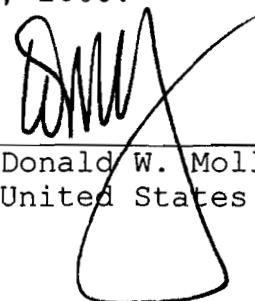
Accordingly, IT IS HEREBY ORDERED that the Complaint is DISMISSED WITH PREJUDICE for failure to state a claim.

IT IS FURTHER ORDERED that Plaintiff Sullivan's filing of this action constitutes a strike for purposes of 28 U.S.C. § 1915(g).

The Court hereby CERTIFIES pursuant to Rule 24(3)(1) of the Federal Rules of Appellate Procedure that any appeal of this

decision would not be taken in good faith.

DATED this 19th day of May, 2008.

A handwritten signature in black ink, appearing to read "DW". It is enclosed in a large, roughly triangular outline.

Donald W. Molloy, District Judge
United States District Court